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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

B5

[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:

FEB 24 2011

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a research scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's determination that the petitioner has not established her eligibility for the benefit sought. The petitioner is the author of a single minimally cited published journal article who is currently working pursuant to a two-year mentoring program. The area in which she claims she will benefit the national interest is notably different from the research discussed in her cited article. While the petitioner submitted letters from independent experts, the evidence submitted in support of the reference letters does not support the claims set forth in those letters. Finally, the petitioner is currently in the United States pursuant to a nonimmigrant visa and has never explained why the benefits she claims will accrue from her two-year project require an immigrant visa.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner [REDACTED] The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, medical and nutritional research, and that the proposed benefits of her work, proper regulation of dietary supplements, would be national in scope. We note, however, that the petitioner is currently working for the [REDACTED] evaluating dietary supplements through a two-

year research participation program. As the petitioner has not explained how she will benefit the national interest after the completion of this mentoring program, it appears that her nonimmigrant visa is sufficient to serve the national interest.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner submitted evidence that she is a member of the [REDACTED] and [REDACTED] memberships are one type of evidence that a petitioner may submit to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on professional memberships, while relevant, are not dispositive to the matter at hand. *NYSDOT*, 22 I&N Dec. at 222.

The petitioner submitted evidence that, as of the date of filing, the petitioner had reviewed two manuscripts, including a review article, for two journals. [REDACTED]

[REDACTED] notes that the journal is one of the highest-ranked journals in chemistry and asserts that he invited the petitioner to review articles for the journal based on her "exceptional expertise." The record contains no evidence to support the implication that peer-review for *Chemical Reviews* is notable in the petitioner's field, such as evidence that the journal utilizes a relatively small number of peer reviewers.

The petitioner submitted evidence that she has authored a single published article. The article addresses molecular motors. She also submitted two PowerPoint presentations and information that purportedly derives from "SciFinder Scholar" providing the abstracts for four presentations allegedly presented at ACS national and regional meetings. The petitioner provided no evidence that these abstracts are available in conference proceedings and did not provide the programs for these conferences listing the petitioner's presentation. Thus, the petitioner has not provided sufficient

evidence that she presented this work and, if she did, whether they constituted poster presentations or oral presentations.

Even accepting that the petitioner presented her research four times, the publication and presentation of research demonstrates only that the petitioner disseminated the research. The dissemination of research is not, by itself, evidence that the research was ultimately influential. [REDACTED] notes that the journal that published the petitioner's article, [REDACTED] is "an international journal of high-impact."

We will not presume the influence of an article from the journal in which it appeared. Rather, the petitioner must demonstrate the impact of the individual article.

The petitioner initially submitted evidence that seven articles have cited the petitioner's article. One of those articles is a self-citation by the petitioner's coauthor, which cannot demonstrate her influence beyond her immediate circle of colleagues. On appeal, counsel asserts that the challenging nature of the petitioner's area of research and the small number of researchers pursuing this research are relevant considerations when evaluating the petitioner's citation record. As will be discussed below, however, the citations themselves are not indicative of the petitioner's influence and do not support the claims that they represent researchers applying the petitioner's work. Regardless, the petitioner has not explained how a single article that has garnered some attention among those investigating molecular motors is representative of a track record of success with some degree of influence in a field that includes dietary supplement research.

While pursuing her [REDACTED] the petitioner worked in [REDACTED] research group. [REDACTED] submits a letter in support of the petition discussing the petitioner's Master of Science research (performed at the same institution) and her doctoral research. Specifically, [REDACTED] asserts that the petitioner's Master of Science research involved "the theory and simulations of structure and dynamics of complex fluids, synthetic molecular motors, and the characterization of ion-selective binding agents." [REDACTED] explains the areas in which the petitioner "showed her exceptional ability" during this work but does not explain how her results have influenced the field. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221.

[REDACTED] next discusses the petitioner's doctoral research, once again providing the areas in which the petitioner received "rigorous training" and developed knowledge. We reiterate that special or unusual knowledge or training does not inherently meet the national interest threshold. *Id.* [REDACTED] explains that the petitioner's doctoral research focused on molecular motors and that she "played a critical role in creating synthetic non-biological molecular motors with a specific focus on rotary motors." [REDACTED] concludes that this work "was a groundbreaking one using energy-driven diastereoselective reactions to drive directional bond rotation in molecular motor molecules." U.S. Citizenship and Immigration Services (USCIS) need not accept primarily conclusory assertions.¹

¹ 1756, *Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

In support of the above conclusion, [REDACTED] notes that the [REDACTED] and the [REDACTED] funded the petitioner's research. Any Ph.D. thesis or postdoctoral research, in order to be accepted for funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the alien employment certification requirement. [REDACTED] further asserts that the petitioner's "publications have been cited worldwide, including in several review articles and important citations in international top-tier journals."

First, while [REDACTED] uses the plural, the petitioner has authored only a single cited article. Second, while [REDACTED] references "several" review articles, the citations include only two review articles, one of which is 119 pages long and cites 640 articles in addition to the petitioner's article. The second review article cites the petitioner's article as one of 18 articles within a single footnote.

After receiving her Ph.D., the petitioner began working as a research associate under the direction of [REDACTED]. [REDACTED] also provides a letter supporting the petition. [REDACTED] asserts that the petitioner joined "the most challenging project: target directed alkylation of DNA." [REDACTED] asserts that *Chemical and Engineering News* has reported on his group's approach in this area. That article is not part of the record. Thus, we cannot determine whether this article reports on [REDACTED] work in general or the petitioner's contributions to that work specifically. According to the petitioner's curriculum vitae, as of the date of filing, the petitioner had a manuscript in preparation for this work and had presented it locally at the [REDACTED]. Thus, it does not appear that this work could have influenced the field as of the date of filing of the petition, the date as of which the petitioner must establish her eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

As noted by counsel, the remaining letters are from independent experts in the field. While we will carefully consider these letters, for the reasons discussed below, the record does not support the assertions in these letters.

The record contains three letters from [REDACTED] the [REDACTED] at the [REDACTED]. [REDACTED] is a member of three editorial boards, a fellow of the [REDACTED] and claims 4,106 citations on his curriculum vitae. We do not question his expertise or sincerity. That said, we cannot ignore that the record fails to support several significant assertions in his letters.

In his first letter, [REDACTED] asserts:

[The petitioner's] paper is significant as it has been accepted and recognized internationally, which can be evidenced by important citations by other independent

experts in their papers published in many international top-ranking or high profile journals. I am one of them who ever relied on her work by citing some of her findings.

We reiterate that there are not "many" independent citations. Rather, there were six citations as of the date of filing, two of which are review articles by [REDACTED]. Moreover, his citation of the petitioner in review articles does not support [REDACTED] implication that he has relied on the petitioner's work in his own original work. As stated above, in his first article, [REDACTED] cites the beneficiary's work as one of 641 citations in a 119-page review. In his second article, [REDACTED] includes the petitioner's work as one of 18 articles (other than the primary article by [REDACTED] in support of the following assertion: "The behaviors of all four 'Gedankenmaschienen' were considered without an external energy sources (other than a heat reservoir at the same temperature as the Gedankenmaschine system) – their purpose was to test the nature of the Second Law of Thermodynamics, not to see how a working Brownian machine could be achieved (that was probably first discussed by [REDACTED])."

In his second letter, [REDACTED] asserts:

[The petitioner's] system solves many core problems of the field: First is the repeatability. 180° rotation has been experimentally realized and explanations have been made on how the system could be extended to achieve 360° repeatable rotation. The [REDACTED] then followed [the petitioner's] approach and forwarded the system to repeatable rotation. Second is the rotation time. Because her approach only needs two steps for a half-turn rotation and one of them is fast planarization, the motor system [the petitioner] reported is the least time-consuming motor up to date. By using similar motor framework and the same type of reactions (chiral substitution and planarization), the [REDACTED] recently reported a potential nanosecond timescale molecular rotor, which could advance the filed [sic] form [sic] hours to nanoseconds in the future.

In his own review article, however, [REDACTED] does not explicitly suggest that [REDACTED] relied upon the petitioner's work. Rather, [REDACTED] states that [REDACTED] efforts were an independent extension of the same strategy. More significantly, [REDACTED] own citations do not suggest any reliance on the petitioner's work. The record contains two 2008 articles by [REDACTED]. In his first article, [REDACTED] cites the petitioner's article as one of five articles that have "reported" synthetic rotary molecular motors powered by chemical energy. In a separate reference letter in the record, [REDACTED] misquotes [REDACTED] by including a reference to [REDACTED] group in the quoted text. The next sentence in [REDACTED] article is: "One of the most promising designs of a rotary molecular motor is based on chiral overcrowded alkenes, exemplified by structure 1 (Fig. 1)." The citation for this sentence is "4a." The article in "4a" is a 2002 article by [REDACTED] which precedes the petitioner's published article by three years. In his second article, [REDACTED] cites the petitioner's article as one of 23 articles in support of the following proposition: "In an effort to gain control over motion at the molecular scale, several designs of linear and rotary molecular motors have been reported." While we do not profess scientific

expertise in reading these technical articles, there seems no reasonable way to interpret these citations as demonstrating any reliance on the petitioner's work.

██████████ cites the petitioner's article as one of 16 articles for the proposition: "A potentially interesting building block for nanotechnology is the molecular motor." The article contains highlighted sentences relating to Figures 1, 4 and 5, but the article does not credit these figures (or the sentences referencing these figures) to the petitioner's work. Once again, this article simply does not support ██████████ implication that ██████████ relied on the petitioner's work to any significant degree.

In his third letter, ██████████ states:

[The petitioner's] significant impact to our field can also be seen by [the] *Wikipedia* explanation of the term "synthetic molecular motor." *Wikipedia* is the most visited internet media for definitions and concepts. The approach [the petitioner] designed and developed is highlighted in *Wikipedia* as a milestone for chemically driven molecular motors. It is her approach, which opened a new window in the field and solved the hardcore problem, which hindered the field from any progress since its start in 1999.

The record contains the *Wikipedia* entry for Synthetic Molecular Motors. The article cites the petitioner's article and states that, after watching ██████████ talk on the petitioner's work, ██████████ "used this approach in their design of a molecule that can repeatably perform 360° rotation." The citation for this sentence is a 2005 article by ██████████ published in *Science*. The record contains no evidence that this *Science* article cites the petitioner's work as would be expected if ██████████ based his research on a presentation of the petitioner's work. The last modification of this *Wikipedia* page is listed as July 24, 2009, after the date of filing. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.² See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).

² Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on February 17, 2011, a copy of which is incorporated into the record of proceeding.

provides similar information to that discussed above, asserting that the petitioner's molecular motor is the best reported and that her work with DNA alkylation "has significant implication for future anti-cancer drug development." As discussed above, the record contains little evidence that the petitioner's molecular motor has been influential in the field. As also stated above, the petitioner has yet to publish or widely disseminate her work with DNA alkylation.

then discusses the petitioner's current research on nutrition and dietary supplement safety at the . states that the petitioner's "contributions to this field include: research and evaluate raw materials of the new product; investigate composition of the new product; assess manufacturing process; validate analytical methodology; investigate dosage upper limit; research product stability with proposed storage conditions; and conclude nutrition efficacy and safety concerns." This list sounds more like a list of job duties rather than past contributions. does not explain how the petitioner's research at has already influenced the field.

In response to the director's request for additional evidence, the petitioner submitted a letter from . does not discuss the petitioner's work at the . Rather, he discusses her molecular motor and her DNA alkylation work. Regarding the latter, asserts that he relies "heavily on [the petitioner's trapping] methods in the analysis of seafood toxins, protein foods and cosmetics contamination." He notes that he saw the petitioner present this work at the . This letter does not demonstrate the petitioner's influence beyond the where she works or the local area where she has worked, Maryland. As discussed above, the petitioner had not widely disseminated her DNA alkylation work as of the date of filing, the date as of which she must establish her eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other

information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

Ultimately, the record establishes that the petitioner's molecular motor garnered some attention in the field, although not commensurate with the major influence described in the letters. The petitioner, however, no longer works with molecular motors. The record is not persuasive that her single cited article on molecular motors is evidence of a track record of success with some degree of influence on a field that includes dietary supplement safety. The petitioner had not widely distributed her postdoctoral research as of the date of filing and the record does not establish that her work for the [REDACTED] has already proven influential. Finally, as discussed above, the petitioner is currently working for the [REDACTED] through a two-year mentorship program. The petitioner, completing her temporary project for the [REDACTED] on a nonimmigrant visa, has not explained how the national interest in ensuring the safety of dietary supplements can only be served through an immigrant visa for this short-term project.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.